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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KENNETH KROPFL, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B207031 (Los Angeles County Super. Ct. No. PC041744)

APPEAL from an order of the Superior Court of Los Angeles County, John P. Farrell, Judge. Affirmed.

Kenneth Kropfl, in pro. per., for Plaintiff and Appellant.

Raymond G. Fortner, County Counsel, Roger H. Granbo, Assistant County Counsel, and Adrian G. Gragas, Principal Deputy County Counsel, for Defendant and Respondent.

Kenneth Kropfl, appearing in propria persona in this court as he did in the trial court, appeals from the order dismissing his lawsuit after the trial court sustained without leave to amend the demurrer of the County of Los Angeles (County) to his complaint. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 6, 2006 Kropfl submitted a $2 million damage claim to the County, apparently seeking compensation for injuries allegedly caused by subliminal messages contained in music videos -- although the nature of the injuries and the County's purported responsibility for them are, at the very least, difficult to understand. The address line on the claim form appears to contain some information, but whatever was written on the form has been blacked out, making it totally illegible.

In a letter dated March 16, 2007, hand-delivered to Kropfl by a paralegal employed in the Los Angeles County Counsel's Office, Kropfl's claim was denied. The letter explained, "Because we were unable to ascertain the nature of your allegations, we attempted to send you a Notice of Insufficiency pursuant to California Government Code § 910.8. However, you failed to provide an address to which the Notice could be sent. Under California Government Code § 911, the County of Los Angeles is not required to provide Notice when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address for the claimant. [¶] Because we were unable to investigate your claim as presented and to alert you of your claim's deficiencies, we are issuing a denial letter. As a matter of law, your claim was denied on September 13, 2006. Therefore, no further [action] will be taken on this matter."

The County's denial letter also included the following warning: "Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited into the mail to file a court action on this claim. . . . ."

On June 7, 2007 Kropfl filed a second damage claim with the County, identifying as the date of his injury "September 13, 2006 7 days after September 6, 2006," apparently a reference to the County's denial of his initial claim. The new claim form stated Kropfl

was seeking $5 million for psychological damages resulting from a sexual assault, which allegedly took place in 1968 when Kropfl was three years old, and sexual harassment, which apparently occurred in 1996. The June 7, 2007 claim form attached a one-page handwritten sheet asserting, in part, "your response to my previous claim is perjury."

On November 19, 2007 Kropfl filed a complaint on Judicial Council of California optional form PLD-Pl-001 against the County and the Attorney General of the State of California, purporting to allege causes of action for sexual assault on a minor, sexual harassment, kidnapping for assault, as well as (it seems) for "hypocrisy and bigotry." The form complaint alleges the injury was done by "television device" and took place over a period of 38 years. The complaint also refers, without elaboration, to "the murder of his [Kropfl's] identical twin brother, twin towers in New York built into a battleship." Attached are a series of handwritten and typed pages, diagrams, photographs and photocopies of various newspaper and magazine pages. There are also a number of pages referring to medical care, including mental health services, received by Kropfl.

On January 29, 2008 the County filed both a demurrer and motion to strike the complaint. In support of its demurrer the County argued the complaint is uncertain (Code Civ. Proc., § 430.10, subd. (f)), fails to state facts sufficient to constitute a cause of action (Code Civ. Proc., § 430.10, subd. (e)) and is barred under Government Code sections 815, 815.2, 820.2, 945.4 and 946.6 (that is, under various statutory provisions for governmental immunity and for failure to file a timely claim against a public entity). Kropfl filed opposition papers, including attachments, again making a general reference to an alleged sexual assault on Kropfl while he was a minor and asserting Kropfl had been falsely arrested in 1996.

On March 7, 2008 the trial court heard oral argument on the County's demurrer. The court sustained the demurrer without leave to amend and granted the County's oral motion to dismiss "for each and every reason stated in the demurrer." (See Code Civ. Proc., § 581, subd. (f)(1).) The court further noted it had read the opposition and attachments and concluded, "[I]t is obvious that the failings in the complaint cannot be

remedied." A signed, written order dismissing the action was filed on April 18, 2008. (See Code Civ. Proc., § 581d.) Kropfl filed a timely notice of appeal.[1]

DISCUSSION

1. *Standard of Review*

On appeal from an order dismissing an action after the sustaining of a demurrer, we independently review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We give the complaint a reasonable interpretation, "treat[ing] the demurrer as admitting all material facts properly pleaded," but do not "assume the truth of contentions, deductions or conclusions of law." (*Aubry*, at p. 967; accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1120.)

2. *The Trial Court Properly Sustained the County's Demurrer Without Leave To Amend*

As a threshold matter, Kropfl's briefs on appeal, which for the most part simply duplicate the material presented as attachments to his complaint, do not identify any legally cognizable error in the trial court's order. Moreover, the briefs fail to comply with the requirements of California Rules of Court, rule 8.204(a)(1)(B) and (C), including the requirements he support his points by argument and, if possible, by citation to legal authority and support references to matter in the record by appropriate citation. We acknowledge a self-represented litigant's understanding of the rules on appeal are, as a practical matter, more limited than an experienced appellate attorney's. Whenever

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[1] Kropfl's notice of appeal was filed April 2, 2008, after the court sustained the demurrer without leave to amend and orally granted the motion to dismiss, but before entry of the appealable written order of dismissal. Pursuant to California Rules of Court, rule 8.104(e)(2), we treat Kropfl's premature notice of appeal as filed immediately after entry of the April 18, 2008 order.

possible, we do not strictly apply technical rules of procedure in a manner that deprives litigants of a hearing. However, when, as here, the total lack of compliance with the Rules of Court results in our inability to conduct a meaningful review of the trial court's decision, we cannot ignore the fundamental rules of appellate practice. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

More fundamentally, Kropfl's complaint, including the various attachments, fails to contain the factual allegations necessary to state any cause of action against the County -- whether based on intentional misconduct or grounded in negligence. In *Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 415, we explained, "A complaint must contain '[a] statement of the facts constituting the cause of action, in ordinary and concise language.' ([Code Civ. Proc.,] § 425.10, subd. (a)(1).)[2] This fact-pleading requirement obligates the plaintiff to allege ultimate facts that 'as a whole apprise[] the adversary of the factual basis of the claim.'" Kropfl's complaint, to the extent we can understand it at all, is so devoid of factual allegations it fails to meet the minimal fact-pleading requirement of Code of Civil Procedure section 425.10, subdivision (a)(1), and is "the functional equivalent of no complaint at all." (*Davaloo*, at p. 417.) Under the most liberal construction of the complaint and its attachments (Code Civ. Proc., § 452), it falls far short of advising the County of the factual basis for Kropfl's claims or providing it with the means to investigate the charges against it or to prepare a defense.

In addition, as the County argues, the Government Claims Act (Gov. Code, § 810 et seq.) establishes the limits of common law liability for public entities, providing a public entity cannot be liable for injuries that result from an act or omission of the public entity or a public employee except as specifically provided by statute. (See *Miklosy v.*

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[2] Code of Civil Procedure section 425.10, subdivision (a), provides, "A complaint or cross-complaint shall contain both of the following: [¶] (1) A statement of the facts constituting the cause of action, in ordinary and concise language. [¶] (2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated."

Regents of University of California (2008) 44 Cal.4th 876, 899.)[3] Yet Kropfl's complaint fails to identify any statutory basis for the County's liability or otherwise plead a basis for avoiding, for example, the affirmative defense of immunity for discretionary acts by a public employee (see Gov. Code, § 820.2)[4] that is plainly suggested by the pleading. (See, e.g., *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 976 [demurrer properly sustained on ground discretionary act immunity under Gov. Code, § 820.2 disclosed by face of complaint].)

Finally, we agree with the trial court and the County that Kropfl failed to file his claims in a timely manner. Under the Government Code a personal injury claim against the County must be presented to it within six months of accrual of the cause of action. (Gov. Code, § 911.2, subd. (a).) Absent legislative intent to supplant the applicable statute of limitations, "the date of accrual of a cause of action . . . is the date upon which the cause of action would be deemed to have accrued . . . if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon." (Gov. Code, § 901.) "Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.'" (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal.4th 797, 806.) Although Kropfl occasionally mentions something akin to continuing acts of abuse, to the extent we can conjure any coherent grievance from his rambling complaint and attachments, he seems to identify an alleged sexual assault in 1968 and harassment arising from an allegedly

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[3] Government Code section 815, subdivision (a), provides public entities are immune from liability except as provided by statute. In contrast, public employees are liable for their torts except as otherwise provided by statute. (Gov. Code, § 820, subd. (a).) Public entities may be held vicariously liable for the torts of their employees (Gov. Code, § 815.2, subd. (a)), but, except as otherwise provided by statute, are immune when their employees are immune. (Gov. Code, § 815.2, subd. (b); see *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 980.)

[4] Government Code section 820.2 provides, "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused."

false arrest in 1996. Any claims based on those incidents accrued many years before he filed his September 6, 2006 damage claim with the County.[5]

In addition, if the public entity properly rejects the claim, as it seems to have done in this case, the plaintiff must initiate a civil action within six months. (Gov. Code, § 945.6, subd. (a)(1); see *Mandjik v. Eden Township Hospital Dist.* (1992) 4 Cal.App.4th 1488, 1499.) Kropfl's complaint was filed more than eight months after he received the County's March 16, 2007 denial letter. This constitutes yet another proper basis for the trial court's order sustaining the demurrer without leave to amend.

DISPOSITION

The order of dismissal is affirmed. Kropfl's "motion to sustain the remitteder [*sic*]," which contains additional photographs and typewritten argument, apparently in further support of his attempt to allege claims against the County, is denied. The County is to recover its costs on appeal.

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PERLUSS, P. J.

We concur:

WOODS, J. JACKSON, J.

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[5] A claimant who fails to timely file his or her claim with the public entity may apply to file a late claim within one year after the accrual of the cause of action. (Gov. Code, § 911.4.) If the public entity denies the claimant's application to file a late claim, the claimant may petition the superior court for relief from the filing requirements. However, the superior court has no jurisdiction to grant relief if the late claim application was filed later than one year after the date of accrual. (See, e.g., *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1779.) Kropfl's delay in proceeding placed him well outside this additional period, as well.